

STATE OF MICHIGAN
COURT OF APPEALS

In re B. KLEPPER, Minor.

UNPUBLISHED
April 14, 2016

No. 329930
Kalamazoo Circuit Court
Family Division
LC No. 2014-000104-NA

Before: MURRAY, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the September 28, 2015 order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (c)(ii) (other conditions exist that could have caused the children to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent). We affirm.

Unlike most termination cases, the argument on appeal is not whether sufficient facts supported the trial court's termination decision. Instead, respondent only argues that her due process rights were violated by the Department of Health and Human Services' (DHHS) failure to provide reasonable efforts toward reunification. Because this issue was not raised before the trial court, our review is limited to plain error affecting substantial rights. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (reviewing an unreserved claim for plain error affecting substantial rights).¹

In *In re Rood*, 483 Mich 73, 122; 763 NW2d 587 (2009), our Supreme Court discussed the due process concerns present in termination proceedings:

[A] parent is entitled to procedural due process if the state seeks to terminate [her] parental rights. The state must make reasonable efforts to notify [her] of the proceedings and allow [her] a meaningful opportunity to participate. We evaluate whether a particular parent was afforded minimal due process on a case-by-case

¹ Respondent's cursory brief neglects to mention that this issue is unreserved. Additionally, respondent's brief does not contain any mention of the standard of review, which is required to be set forth in the brief. See MCR 7.212(C)(7).

basis. Statutory requirements, court rules, and agency policies provide an important point of departure for this inquiry. [*Id.* at 122.]

When a child is removed from her parent's custody, the petitioner must "make reasonable efforts to rectify the conditions that cause the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). But, there also "exists a commensurate responsibility on the part of [the] respondent[] to participate in the services that are offered." *Frey*, 297 Mich App at 248.

Respondent raises four specific arguments with respect to her right to procedural due process² being violated by DHHS's failure to meaningfully provide services to address her mental health needs. First, respondent argues that DHHS failed to obtain a workbook recommended by Dr. Randall Haugen following respondent's psychological evaluation. However, the record shows ample efforts by the caseworkers to obtain the workbook. Their efforts, however, were ultimately unsuccessful. Moreover, although respondent's counselor ultimately reported to the caseworker that she was unable to go through the workbook with respondent, she nevertheless was working with respondent on the issues that the workbook would have addressed. Respondent fails to explain how the efforts undertaken by DHHS to obtain the workbook were not reasonable particularly when DHHS offered to work with her on issues addressed in the workbook.³ Further, given respondent's inconsistent attendance in therapy throughout the proceeding, there is no indication that she would have fared any better had the workbook been provided to her. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

For her next two arguments, respondent asserts that DHHS failed to "follow up" with Community Mental Health (CMH) after it denied her medication and approval to participate in the Interact program, which would have helped respondent address her borderline personality disorder. The record refutes these claims, as respondent's caseworker testified that after respondent learned that she did not qualify for services through CMH, the caseworker was in contact with CMH. Respondent's caseworker confirmed that CMH denied respondent services, indicating that respondent simply did not qualify. There does not appear to be anything else that DHHS could have done in this regard, and respondent offers no such suggestion. Moreover, at the time of the termination hearing, respondent testified that she was taking medication prescribed to her by the Family Health Center. There were no concerns expressed in the trial court regarding the inadequacy of this medication or that respondent should have been taking additional medication to treat her mental health issues. Nor is there such an assertion within respondent's brief on appeal. Further, given that respondent had not derived a benefit from the ample services offered to her throughout this proceeding, it is not apparent that she would have fared any better at the time of the termination hearing had she been qualified for the Interact program.

² This right comes from the Fourteenth Amendment to the United States Constitution and Article 1, § 17 of the 1963 Constitution.

³ Indeed, respondent's brief sets forth this argument in a minimalistic fashion, and contains no context for what occurred during these entire proceedings.

Finally, respondent argues that “DHHS gave her less than the reunification efforts she deserved” because of her prior criminal conviction for assault with intent to commit penetration and because of DHHS’s “policy.” We presume respondent’s argument refers to a DHHS policy that requested a court order to pay for respondent’s services because of her status as a sex offender. Upon DHHS’s request, at a dispositional review hearing, the trial court ordered it to pay for respondent’s services. Accordingly, respondent fails to establish that DHHS’s efforts were somehow inadequate in this regard.

Further, throughout this proceeding DHHS made reasonable efforts to reunify respondent with the child. Respondent was offered counseling services to address her mental health barrier, but she inconsistently attended the therapy sessions. As a result, her ability to make progress in counseling was impeded by her inconsistent attendance. Although this was the only service directly aimed at improving respondent’s mental health, respondent was also referred to numerous other services, including a Women’s Specialty Program, a Supportive Visitation Program, parenting classes, Housing Resources Incorporated, and Michigan Works. Accordingly, respondent has not established plain error affecting substantial rights in regard to the reasonable efforts toward reunification expended by DHHS. *VanDalen*, 293 Mich App at 135. Because reasonable efforts were made, thereby providing respondent with a meaningful opportunity to participate in the proceeding, DHHS did not violate respondent’s due process rights. See *Rood*, 483 Mich at 122.

Affirmed.

/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan